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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Communications Assistance  
for Law Enforcement Act

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 97-213

## BELLSOUTH COMMENTS

BellSouth Corporation, on behalf of its affiliated companies,<sup>1</sup> files its comments to the Public Notice released in this docket on May 7, 1999.<sup>2</sup> The revenue estimates for software and hardware upgrades to switching equipment manufactured by Alcatel, Lucent, Motorola, Northern Telecom, and Siemens (the manufacturers) are materially relevant to the Commission's determination of contested issues pending in the Further Notice of Proposed Rulemaking.<sup>3</sup>

The Commission initiated its FNPRM under section 107(b) of CALEA in order to adopt technical requirements and/or standards that will allow carriers to meet the assistance capability requirements of section 103 of CALEA.<sup>4</sup> Section 107 of CALEA expressly requires the FCC to consider cost as a factor in determining the CALEA technical standards.<sup>5</sup> Cost considerations,

<sup>1</sup> BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Personal Communications, Inc., BellSouth Wireless Data, L.P., and affiliated companies.

<sup>2</sup> *Comment Sought on CALEA Revenue Estimates of Five Manufacturers*, CC Docket 97-213, Public Notice DA 99-863 (May 7, 1999) (Public Notice).

<sup>3</sup> Communications Assistance for Law Enforcement Act, *Further Notice of Proposed Rulemaking*, 13 FCC Rcd 22632 (1998) (FNPRM).

<sup>4</sup> *Id.* at ¶ 46.

<sup>5</sup> Letter from Rep. Bob Goodlatte, Rep. John Conyers, Rep. Zoe Lofgren, Rep. Bob Barr to William E. Kennard, Chairman, FCC, (February 25, 1999) at 1.

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such as the revenue estimates filed by the manufacturers,<sup>6</sup> permeate CALEA and are an essential component in any determination of how section 103's assistance capability requirements are to be met:

CALEA does not specify how these requirements are to be met. Rather, the Act requires carriers, *in consultation with manufacturers*, to ensure that their equipment, facilities, or services can comply with the requirements set out in section 103. *Manufacturers* are required to make available the features and modifications that are necessary to comply with the capability requirements "on a reasonably timely basis *and at a reasonable cost*." The Attorney General is to consult with the telecommunications industry, users, and state utility commissions to "*ensure the efficient and industry-wide implementation of the assistance capability requirements*."<sup>7</sup>

Indeed, four of the five criteria established by Congress under section 107(b) relate to cost considerations: the standards "*must* meet the assistance capability requirements of Section 1002 of this title [section 103 of CALEA] by *cost-effective methods*;" the standards must "*minimize the cost of such compliance* on rate payers;" the standards must serve the policy of the United States to encourage the provision of new technologies and services to the public (high cost standards would undermine policy by discouraging the provision of new technologies and services); and the standards must provide a reasonable time and conditions for compliance with and the transition to the new standard (an unreasonable time would undermine cost-effective deployment, maximize ratepayer exposure to the costs of compliance, and interfere with the provision of new technologies and services).

The Chief, Office of Engineering and Technology (OET), notes that the unadjusted revenue estimates supplied by the manufacturers (1) do not represent all CALEA-related

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<sup>6</sup> The manufacturers did not supply profit data, only revenue data. (Public Notice at ¶ 2, n.3).

<sup>7</sup> Communications Assistance for Law Enforcement Act, CC Docket No. 97-213, Memorandum Opinion and Order, FCC 98-223 (September 11, 1998), ¶ 3 (emphasis added, footnotes omitted).

software and equipment revenues anticipated by them; (2) do not include revenues for other manufacturers; (3) are not completely comparable, because different manufactures provided different data; (4) are in some cases predicated on a possible Government “buyout” plan; (5) are based on various methods for estimating switch count; and (6) some estimates are for hardware only, while some are for software only.<sup>8</sup> Even more critically, the costs, however staggering, represent only the tip of the iceberg. Carriers such as BellSouth will have other equipment and installation costs associated with CALEA upgrades that will bring the total cost of CALEA compliance far above the totals set forth in the Public Notice.

Given its petition for reconsideration of the Bureau’s confidentiality order which enabled the manufacturers to provide cost data, and for OET to release the data in an aggregated fashion, it is to be expected that the Federal Bureau of Investigation (FBI) will file comments attempting to persuade the Commission to disregard the data.<sup>9</sup> The OET should reject any such argument out of hand. The Commission must determine whether CALEA compliance can be achieved at a reasonable cost, and it must rely on cost data to make this determination. To the extent the Commission itself desires more data from manufacturers, it has a broad range of information gathering tools in its employ to obtain additional data. Moreover, the FBI has in its possession cost data from manufacturers that is highly relevant to this proceeding but that it persists in refusing to make a part of the record. It cannot in fairness be heard to argue that the costs of complying with CALEA or the punch list are reasonable, yet deny the public the opportunity to comment on actual cost data.

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<sup>8</sup> Public Notice at ¶ 4.

<sup>9</sup> Communications Assistance for Law Enforcement Act, CC Docket 97-213, *FBI/DOJ Petition for Reconsideration* (filed March 30, 1999). But see Communications Assistance for Law Enforcement Act, CC Docket 97-213, *Opposition of CTIA* (filed April 9, 1999). BellSouth concurs with the CTIA Opposition to the FBI/DOJ Petition for Reconsideration.

## CONCLUSION

The revenue estimates that are the subject of the Public Notice represent only a small portion of the industry's cost of compliance with CALEA, an enormous cost which will inevitably be passed on to carriers' customers. The data must, by statute, be considered by the Commission as it considers whether the costs of complying with CALEA are reasonable.

Respectfully submitted,

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May 17, 1999

## CERTIFICATE OF SERVICE

I do hereby certify that I have this 17th day of May, 1999, served the following parties to this action with a copy of the foregoing BELLSOUTH COMMENTS by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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